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JUL 29 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re)
)
Amendment of Section 73.202(b),) MB Docket No. 02-136
Table of Allotments,) RM-10458
FM Broadcast Stations) RM-
(Arlington, The Dalles, Moro and)
Hermiston, Oregon; Covington,)
Trout Lake, Walla Walla and)
College Place, Washington))

TO: Assistant Chief, Audio Division
Media Bureau

**COUNTERPROPOSAL AND
COMMENTS IN SUPPORT THEREOF**

Two Hearts Communications, LLC (THC), licensee of FM Broadcast Station KHSS, Channel 264C3, Walla Walla, Washington, by its attorney, and pursuant to the **Notice of Proposed Rulemaking** in the above-entitled matter, hereby respectfully submits its Counterproposal, and urges that the public interest, convenience and necessity as well as a fair, efficient and equitable distribution of broadcast facilities among the states and communities would be better served by amending the FM Table of Allotments as follows:

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<u>Community</u>	<u>Present</u>	<u>Proposed</u>
The Dalles, Oregon	224C3, 244C3, 249C2 *268C3, 283C3	24C3, 244C3, 249C *268C3,
Covington, Washington	--	283C3
Arlington, Oregon	--	263C2
Moro, Oregon	--	283C1
Trout Lake, Washington	--	226A
Walla Walla, Washington	227C1, 239C, 246C, 256C2, 264C3	227C1, 239C, 246C, 256C2
College Place, Washington	--	264C2
Hermiston, Oregon	263A	261A

Statement of Interest

1. At the outset, THC states that, should the Commission upgrade Channel 264 to Class C2 status and allow the reallocation of that channel from Walla Walla to College Place, Washington, THC will file such application(s) as are necessary to obtain regulatory approval to effectuate such changes, and then construct and operate KHSS(FM) on upgraded Channel 264C2 at College Place, Washington. Additionally, THC would file such applications as are necessary to attempt to obtain a construction permit for Channel 263C2 at Arlington, Oregon, and, if successful, construct and operate the resulting FM station there. Finally, THC would reimburse the licensee of KQFM(FM), Hermiston, Oregon for its costs reasonably and prudently incurred in changing its frequency from Channel 263A to Channel 261A and relocating its transmitter site to a point which would be fully-spaced with KHSS(FM) operating with Class C2 facilities at its

current transmitter site, in accordance with the policy set forth in *FM Table of Assignments, Circleville, Ohio*, 8 FCC 2d 159, 163-64 (1967).

Preliminary Statement

2. The original proposal in this case involves an attempt to move FM Broadcast Station KMCQ, 104.5 MHz, from The Dalles, Oregon, located along the Columbia River about 50 miles east of Portland, to the Seattle-Tacoma metropolitan area, with nominal "community of license" at Covington, Washington, and the "hypothetical" transmitter site coordinates located near Enumclaw, Washington. The Seattle-Tacoma metropolitan area already has 18 commercial FM allocations (Seattle 12, Tacoma 3, Bremerton 1, Bellevue 1, Olympia 1), all of which are occupied by existing stations. In order to pull off the reallocation of Channel 283 to the Seattle-Tacoma area for the region's 19th commercial FM allocation, Mid-Columbia Broadcasting, Inc. (Mid-Columbia) and First Broadcasting Company, L.P. (FBC) propose a series of three new FM "drop-ins", at Moro and Arlington, Oregon and Trout Lake, Washington.

3. Were Mid-Columbia and FBC to successfully prosecute their "Petition for Rulemaking" through the Commission as presently constituted, it would forever preclude THC's KHSS(FM), Walla Walla, Washington, from an upgrade of facilities to serve its relatively far-flung

media market in southeastern Washington and adjacent areas in northeastern Oregon. Therefore, THC respectfully seeks consideration of its proposal to upgrade station KHSS(FM) to Class C2 status, which would also provide the benefit of a first local aural broadcast service to the independent community of College Place, Washington.

4. In order to effectuate the upgrade of KHSS(FM) to Class C2 status on Channel 264, Channel 263A at Hermiston, Oregon, now occupied by FM Broadcast Station KQFM, would have to be deleted and Channel 261A allocated in its place at Hermiston. The allocation of Channel 261A at Hermiston is mutually-exclusive with the allocation of Channel 261C2 at Arlington, Oregon proposed by Mid-Columbia and FBC; THC hereby proposes the allocation of Channel 263C2 (100.5 MHz) at Arlington instead.

Technical Considerations

5. There is appended hereto as Exhibit A a technical statement prepared by consulting engineer Michael T. McKenna of Long Beach, California. Mr. McKenna demonstrates that (1) the present allocation of Channel 263A at Hermiston, Oregon (used by KQFM) precludes KHSS from upgrading to Class C2 facilities; (2) Channel 261A can be allocated to Hermiston in place of Channel 263A so long as the station occupying that channel operates from a site 11.9 km (7.4 miles) northwest of Hermiston, at NAD27 coordinates 45° 52'

45" N, 119° 25' 52" W; (3) the proposed use of Channel 261A at Hermiston conflicts with the proposal of Mid-Columbia and FBC to allocate Channel 261C2 at Arlington, Oregon; (4) assuming the deletion of Channel 263A from Hermiston (and concomitant allocation of Channel 261A there), Channel 263C2 would then be available for allocation at Arlington, Oregon; and (5) that THC's plan, upon adoption, would allow for fully-spaced allocations (assuming the site-restriction at Hermiston as discussed above), and for Channel 264C2 to be allocated to College Place, Washington, with no change in the current KHSS(FM) transmitter site.

6. THC informs the undersigned that it has contacted the owner of the property which includes the NAD27 coordinates 45° 52' 45" N, 119° 25' 52" W, and has determined that said property would be available for use as an FM transmitter site for station KQFM.

7. Although not contained in his appended technical statement, Mr. McKenna has advised the undersigned that, at present with Class C3 facilities, KHSS(FM) provides service to 39,272 persons within an area of 2,064 square kilometers. Should the Commission upgrade KHSS(FM) to Class C2 status on Channel 264A, it would be able to provide service to 97,853 persons within an area of 8,936 square kilometers. This vastly improved service is in the public interest, and is a

more efficient use of Channel 264, thereby serving the statutory mandate of 47 U.S.C. §307(b).

8. Furthermore, the public interest, convenience and necessity would be served by the change in channel at Hermiston from Channel 263A to Channel 261A because it would eliminate the first adjacent-channel interference that presently exists between the existing KHSS(FM) and KQFM(FM) facilities. Both KHSS(FM) and KQFM(FM) would be better able to provide their respective listening areas with a better, clearer signal.

College Place, Washington

9. College Place is located in Walla Walla County, Washington. It is an incorporated city with a 2000 U. S. Census population of 7,818¹. The community was first settled in about 1869, when pioneers to the area saw it as a good place to establish a college. Dr. N. G. Blalock, a physician, donated 40 acres to the Seventh Day Adventist Church for the purposes of establishing a school, and the resulting college, known as Walla Walla College, opened on December 7, 1892. The community's name was suggested by a Henry Carnahan, who arrived in the area with his wife in 1891, and Mr. Carnahan became the community's first

¹The National Atlas of the United States reports the reference coordinates for College Place as: 46° 02' 58" N; 118° 23' 14" W. The KHSS(FM) transmitter site is located at: 45° 59' 04" N; 118° 10' 08" W.

as a city on December 24, 1945². It has a post office, with zip code 99324.

10. College Place is governed by a city council consisting of a Mayor and six councilmen. A city administrator hired by the council oversees day-to-day management of city functions. College Place has a police department, a fire department, a public works department, and a planning commission. It is served by College Place School District No. 250, which includes a 30 square mile area, and operates three schools: Davis Elementary, Meadow Brook Intermediate and John Sager Middle School³. College Place continues to be the home of Walla Walla College, a four-year undergraduate institution which is operated by the Seventh Day Adventist Church (the college offers over 20 undergraduate majors leading to a bachelor's degree and also offers graduate programs in Biology, Education/Psychology and Social Work)⁴.

11. There are no commercial broadcast stations licensed to College Place at present, although non-commercial FM Broadcast Station KGTS, 91.3 MHz (Channel 217) is operated by Walla Walla College at College Place.

12. Therefore, the allocation of Channel 264C2 at College Place would provide (1) a first local commercial

²Source: a history of College Place, Washington by Elizabeth Gibson, <http://hometown.aol.com/Gibson0817/collegep.htm>.

³Source: <http://www.ci.college-place.wa.us/>

broadcast station to College Place and (2) upgraded service over KHSS(FM) to listeners in substantial portions of southeastern Washington and northeastern Oregon.

Other Matters in This Docket

13. The Commission raised an issue as to whether Trout Lake, Washington is a community to which a broadcast station may be licensed. The undersigned's research revealed that, while Trout Lake is an unincorporated place (the 2000 U.S. Census found that the Trout Lake "census designated place" had a population of 494), it does have a post office (zip code 98650), it does have a public school serving grades K through 12 with a total of 186 students operated by the Trout Lake School District #400⁵, it has 4 churches (Church of Christ, Jonah Ministries, Mount Adams Baptist Church, and Presbyterian Church) and an organization called "Self-Mastery Earth Institute", it is served by the Glacier Springs Water Association and an office of the United States Forest Service, as well as a number of local businesses⁶. It appears from the case law that, because Trout Lake is in an isolated rural area (about 25 miles north of the nearest town of appreciable size, Hood River, Oregon, near Mount Baker and an entrance to the Gifford Pinchot National Forest), it has enough indicia of a community to sustain a

⁴Source: <http://www.wwc.edu>

⁵Source: <http://www.cgeda.com/edklic1.htm>

claim of community status. **FM Table of Allotments, Cal-Nev-Ari, Nevada**, 14 FCC Rcd 17153 (1999), citing with approval **FM Table of Allotments, Semora, North Carolina**, 5 FCC Rcd 934 (1990); compare **Las Vegas and Rowe, New Mexico**, 16 FCC Rcd 2312 (2001) ("community status" is not automatic).

Conclusion

WHEREFORE, it is respectfully urged that the Commission (1) reallocate Channel 264 from Walla Walla, Washington to College Place, Washington; (2) upgrade Channel 264 at College Place to Class C2 status; (3) change the frequency allocation at Hermiston, Oregon from 263A to 261A; (3) allocate Channel 263C2 (in lieu of Channel 261C2) at Arlington, Oregon; (4) and grant the remainder of the allocation package proposed by Mid-Columbia and First, including new allocations at Moro, Oregon and Trout Lake, Washington and reallocation of Channel 283C3 to Covington, Washington.

⁶Source: "Directory Assistant" CD-ROM Software (Papillon, NE, infoUSA, Inc., 2002).

Respectfully submitted,

TWO HEARTS COMMUNICATIONS, LLC

By 

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July 29, 2002

EXHIBIT A

**PETITION FOR RULE MAKING
TWO HEARTS COMMUNICATIONS, LLC
JULY, 25 2002**

TECHNICAL STATEMENT

This Technical Statement of facts is being prepared for the applicant, Two Hearts Communications, LLC., Licensee of radio station KHSS (FM), Walla Walla, Washington, to UPGRADE class from C3 to C2 on the existing allocated channel of 264 and to change the City of License from Walla Walla to College Place, Washington pursuant to Section 1.420(i) of the Commissions Rules and Regulations.

To enable the proposed re-allotment and upgrade of station KHSS (FM) to channel 264 C2, the applicant proposes to relocate station KQFM (FM) Hermiston, Oregon from 263 A to channel 261 A and to relocate the transmitter location of KQFM (FM) to a new transmitter location 11.9 KM (7.4 Miles) northwest of the city of Hermiston. This new proposed transmitter location is located on a hill 630 feet AMSL. Complete coverage of the city of license can be accomplished from this location.

KHSS (FM) has suffered interference from KQFM in Hermiston, Oregon, since the Commission re-located KQFM from channel 257 A to 263 A, several years ago. This change has allowed Station KQFM to overlap the contours of station KHSS in violation of Commission Rules. The instant Rule Making seeks to cure this interference and to provide KHSS with an upgrade. Thus KHSS is willing to re-locate KQFM to accomplish the requested upgrade and to better serve the general public and the local community.

Exhibit E-1 is an Area To Locate Map showing all possible area in which channel 261 A could be located to serve the community of Hermiston, Oregon. FM channels 260 C1 and 262 C1 preclude most of the area and the present KQFM transmitter location from use by FM channel 261 A. However, the use of FM channel 263 A at Hermiston, Oregon not only precludes the UPGRADE of KHSS (FM) but causes interference to KHSS as well. The applicant thus requests the allocation of 261 A in place of 263 A at Hermiston, Oregon and allocation of 263 C2 in lieu of channel 261 C2 at Arlington, Oregon. This counter-proposal is mutually exclusive with the Proposed Rule Making at Arlington, Oregon and a FM channel study is attached to confirm this fact. The upgrade of KHSS and re-location from Walla Walla, Washington to College Place, Washington would provide that community with its first wide area radio service. College Place is an incorporated city with its own governmental services.

Respectfully submitted



Michael T. McKenna

President

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FM Channel Study

KHSS (FM) 264 C2 Study 45-59-04 N X 118-10-08 W
Walla Walla, Washinton

261	C2	Arlington, OR	PRM	160.4 KM	Clear
262					Clear
263	A	Hermiston, OR		89.5 KM	Short **
264					Clear
265	C2	Grandview, WA		152.1 KM	Clear
266					Clear
267	C3	Pasco, WA		83.1 KM	Clear

KQFM (FM) 261 A Study 45-52-45 N X 119-25-52 W NEW SITE
Hermiston, Oregon

Proposed Site: 11.9 KM (7.4 Miles) Northwest of Hermiston, Oregon

258					Clear
259	C3	Yakima, WA		99.9 KM	Clear
260	C1	La Grande, OR		133.9 KM	Clear
261	C2	Arlington, OR		62.3 KM	Short **
262	C1	Moses Lake, WA		136.8 KM	Clear
263	A	Hermiston, OR		9.5 KM	Short **
264	C3	Walla Walla, WA		98.6 KM	Clear
264	*C2	College Place, WA		98.6 KM	Clear

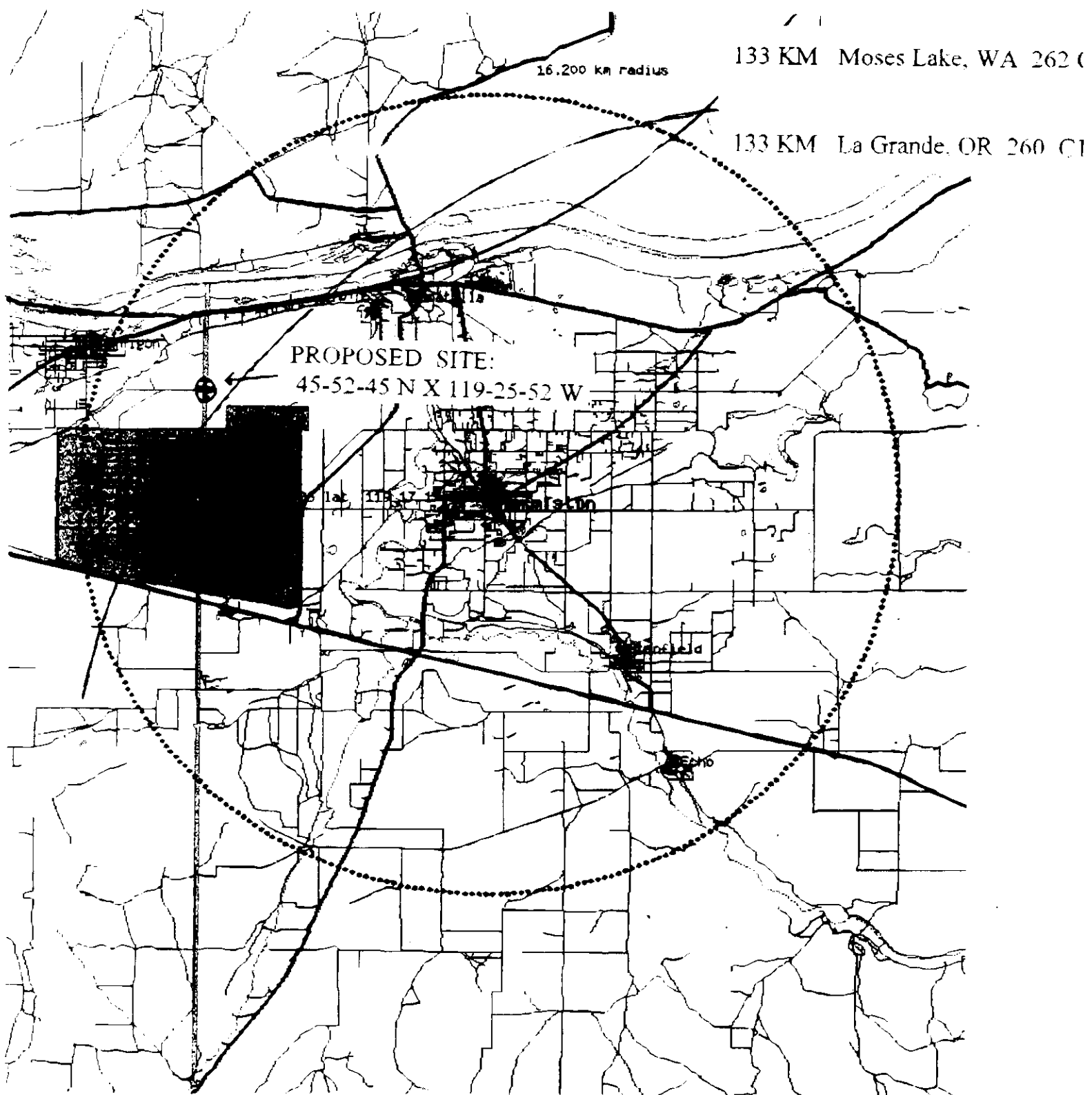
PRM / CPRM 263 C2 (261 C2) 45-43-04 X X 120-11-53
Arlington, Oregon

260					Clear
261	C2	PRM Arlington, OR			Short ***
262	C1	Moses Lake, WA		170.4 KM	Clear
262	C	Portland, OR		199.8 KM	Clear
263	*C2	Arlington, OR			Short ***
264	*C2	College Place, WA		160.4 KM	Clear
265	C2	Grandview, WA		86.5 KM	Clear
266					Clear

Date of Study: July 27, 2002

AREA TO LOCATE
Hermiston, Oregon
Channel 261 A

EXHIBIT E - 1



CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing "Counterproposal, etc." were served by first-class United States mail, postage prepaid, on this 29th day of July, 2002 upon the following:

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